

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FINJAN LLC,
Plaintiff,
v.
PALO ALTO NETWORKS, INC.,
Defendant.

Case No. [3:14-cv-04908-JD](#)

ORDER RE MOTION TO STRIKE

Defendant Palo Alto Networks, Inc. (PAN) asks to strike portions of plaintiff Finjan's expert reports that are said to rely on undisclosed infringement theories. Dkt. No. 230. The request is granted in part.

Pursuant to the scheduling order, the parties exchanged expert reports in January 2023. *See* Dkt. No. 194. PAN says that that three of Finjan's experts, namely Dr. Min, Dr. Jakobsson, and Dr. Keromytis, offered infringement opinions based on the "CTD engine," "single pass scanning," and "single pass architecture," that were not disclosed in Finjan's infringement contentions.

As the Federal Circuit has rightly observed, our District's patent local rules require plaintiffs and defendants "to provide early notice of their infringement and invalidity contentions, and to proceed with diligence in amending those contentions when new information comes to light in the course of discovery." *O2 Micro Int'l Ltd. v. Monolithic Power Sys., Inc.*, 467 F.3d 1355, 1365-66 (Fed. Cir. 2006). Under Patent Local Rule 3-1, a party alleging infringement must serve contentions that: (a) identify each allegedly infringed claim and (b) each accused device, method, or instrumentality; (c) provide a chart "identifying specifically where each limitation of each asserted claim is found within each Accused Instrumentality"; (d) state the bases for any claims of indirect or joint infringement; (e) state whether each claim is alleged to be infringed literally or under the doctrine of equivalents; (f) identify the priority date to which each claim is entitled; (g)

1 identify any of the patentee's own products that allegedly embody the asserted claims; and (h) state
2 the grounds for willful infringement claims. Patent L.R. 3-1.

3 The purpose of the Rule 3-1 disclosures is to reduce uncertainty about the parties' claims,
4 and to ensure that the often costly course of patent litigation is focused on the disagreements that
5 matter. To those ends, Rule 3-1 disclosures are made early in the case and are subject to
6 amendment only upon diligence and good cause. *See Altera Corp. v. PACT XXP Techs., AG*, Case
7 No. 14-cv-02868 JD, 2015 WL 928122 at *1 (N.D. Cal. Feb. 19, 2015).

8 The parties disagree as to what, exactly, the CTD engine is or does, and whether Finjan has
9 properly disclosed infringement claims related to it. According to PAN's Rule 30(b)(6) deponent,
10 the CTD engine is a "unified threat engine" that inspects network traffic for malware and
11 cybersecurity threats. Dkt. No. 234-8 at 62:24-63:4. In Finjan's view, the CTD engine is
12 effectively interchangeable with Content-ID, which Finjan's infringement contentions disclosed.
13 PAN's Rule 30(b)(6) deponent has said, "Content-ID is not a term we really use" to describe its
14 software or hardware. Dkt. No. 229-3 at 6. But according to Finjan, Content-ID is a key
15 component of PAN's Next Generation Firewall (NGFW) that scans content in an incoming
16 stream. Dkt. No. 234-3 at 81, 83; *see also* Dkt. No. 195-5 at 107.

17 Finjan says that the CTD engine underpins Content-ID, *see* Dkt. No. 235 at 7, so Finjan's
18 expert reports can treat CTD and Content-ID interchangeably in their infringement analysis. *See*,
19 *e.g.*, Dkt. No. 230-2 at 9 (referring to "Content ID or the CTD engine"). According to Finjan,
20 "PAN engineering uses the term CTD, while PAN marketing uses the term Content-ID," and so
21 everyone is talking about the same thing and nothing is new in the expert opinions. Dkt. No. 235
22 at 6.

23 The record indicates that Finjan goes too far. The deposition testimony by a PAN witness
24 that it relies on does not say that the two features are identical, or that the CTD engine is the
25 engine underlying Content-ID. Dkt. 234-8 at 62:18-63:1. Finjan itself did not use the terms
26 interchangeably in its second amended infringement contentions, and appears to have changed
27 tack on the issue in its expert reports. *See* Dkt. No. 195-5 (using only the term "Content-ID" and
28 not "CTD" or "CTD engine"). In addition, the record demonstrates that PAN's public-facing

website hosts separate pages for the CTD engine and Content-ID, which weighs against Finjan's position. Dkt. No. 230-8.


Finjan proposes in the alternative that it disclosed the CTD engine when it listed source code for the engine in its infringement contentions. This suggestion is also not well taken. For Claim 1[a] alone, Finjan's infringement contentions list over eighty files as potentially implementing the infringing technology. Dkt. No. 234-3 at 27-30. Of these files, only a small fraction contain the substring "_ctd_" somewhere in the filename. *Id.* The rest of the files correspond to other software functionality unrelated to the CTD engine. *Id.* A few, scattered references to a product -- either in metadata like filenames or contained within software files -- do not meet the letter of Rule 3-1(b)'s requirement that each instrumentality "shall be identified by name," or its spirit of adequate disclosure.

Overall, Finjan's prior disclosures did not give PAN fair notice of the infringement claims with respect to the CTD engine on which Finjan's experts now seek to opine. Consequently, opinions that rely on a "CTD engine" in NGFW to show that PAN infringes the '408, '154, and '731 patents will be excluded.

A different outcome is warranted for the opinions about single pass architecture and single pass scanning. PAN stumbled on these issues by initially saying that Finjan never mentioned single pass architecture or single pass scanning anywhere in its infringement contentions, *see* Dkt. No. 230 at 8, and then backtracking after Finjan identified multiple references throughout the '408 patent infringement chart, *see* Dkt. No. 247 at 7, n.4. That is an effective end to PAN's objections on this score. Infringement opinions by Finjan's experts with respect to single pass architecture and scanning will not be excluded as inadequately disclosed.

IT IS SO ORDERED.

Dated: September 27, 2023


 JAMES DONATO
 United States District Judge